

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 144 - SB 328

February 2, 2023

SUMMARY OF BILL AS AMENDED (003437): Decreases, from 25 days to 17 days, the minimum period a person who was convicted of a second offense of driving under the influence (DUI) must serve in order to be eligible to participate in a substance abuse treatment program as a condition of probation.

Requires a court to order a person who has been charged with a third or subsequent offense of driving under the influence of alcohol, and upon the person's release on bail, to wear a transdermal alcohol monitoring device for a minimum period of 90 days of continuous sobriety without any confirmed drinking or tampering events, unless the person's criminal case is resolved prior to the completion of the 90-day period.

Requires a court to order a person who has been convicted for a third or subsequent offense of driving under the influence of alcohol, and upon the person's release on probation, to wear a transdermal alcohol monitoring device for a minimum period of 90 days of continuous sobriety without any confirmed drinking or tampering events. Authorizes a judge to waive the transdermal monitoring device requirement in the best interest of justice if the person has already completed a 90-day period of continuous sobriety as a condition of release on bail.

FISCAL IMPACT OF BILL AS AMENDED:

**Increase State Expenditures – \$165,000/FY23-24 and Subsequent Years/
Electronic Monitoring Indigency Fund**

Increase Local Expenditures – \$332,000/FY23-24 and Subsequent Years*

Decrease Local Expenditures – \$572,300/FY23-24 and Subsequent Years/Permissive

Assumptions for the bill as amended:

- Pursuant to Tenn. Code Ann. § 55-10-402(a)(2)(A), person convicted of a second offense of DUI must be sentenced to serve in the county jail or workhouse not less than 45 consecutive days nor more than 11 months and 29 days.
- Pursuant to Tenn. Code Ann. § 55-10-402(a)(2)(B), upon conviction of a second offense of DUI, if the offender completes a clinical substance abuse assessment and serves at least 25 days of the prescribed sentence, a judge may order the person to participate in a

substance abuse treatment program as a condition of probation. The proposed legislation reduces the required period of incarceration by 8 days, from 25 days to 17 days, that an offender must serve before a judge may order the person to participate in a substance abuse treatment program.

- Pursuant to Tenn. Code Ann. § 55-10-402(h), a person ordered to attend a substance abuse program receives day-for-day sentence reduction credits for the period of time the person spends in a residential treatment program and one day of credit for every nine hours of successfully completed intensive outpatient treatment.
- A person who does not successfully complete the program is in violation of the person's probation and must serve the full period of the mandatory minimum confinement and any additional time as the court deems necessary. A person who successfully completes the program is required to report to the county jail or workhouse to serve the remainder of any mandatory period of confinement required by law and imposed by the court. A failure to do so is a violation of the person's probation.
- Based on conviction data provided by the Administrative Office of the Courts (AOC), and the recidivism rate provided by the Tennessee Department of Corrections (TDOC), it is estimated that an average of 4,098 people are convicted of a second offense of DUI in Tennessee each year.
- It is unknown what percentage of those are released early on probation and required to participate in a substance abuse treatment program, but given the pressures on many of the local incarceration facilities, it is assumed that at least half of these offenders are released under such conditions, or 2,049 offenders (4,098 offenders x 50%).
- It is assumed that 60 percent of such offenders, or 1,229 offenders (2,049 offenders x 60%) will successfully complete the program. It is further assumed that the amount of received credits will be sufficient to accomplish the remainder of their sentence.
- Therefore, as a result of the proposed legislation, it is assumed that an estimated 1,229 offenders will spend 8 days less in a local jail each year.
- Based on cost estimates provided by local government entities throughout the state and reported bed capacity within such facilities, the weighted average cost per day to house an inmate in a local jail facility is \$58.21.
- The permissive decrease in local expenditures related to incarceration is estimated to be \$572,321 (1,229 offenders x 8 days x \$58.21) in FY23-24 and subsequent years.
- The proposed legislation requires a court to order a person who has been charged with a third or subsequent offense of driving under the influence of alcohol, specifically, and upon the person's release on bail, to wear a transdermal alcohol monitoring device for a minimum period of 90 days of continuous sobriety without any confirmed drinking or tampering events. It also places the same requirement upon those convicted of such a third or subsequent offense, upon release on probation.
- Based on conviction data provided by the AOC, and the recidivism rate provided by the TDOC, it is estimated that an average of 4,382 people are convicted of a third or subsequent offense of DUI in Tennessee each year.
- It is not known how many of those convictions involve the use of alcohol, but it is assumed to be 90 percent, or 3,944 convictions (4,382 convictions x 90%).
- It is assumed that 100 percent of those convicted of such a third or subsequent offense, or 3,944 people, will be required to wear a transdermal monitoring device for at least 90 days. There are other potential cohorts of people that could end up being monitored for

less than 90 days or more, depending on whether or not they are released on bail, how long the pretrial period is, whether they are ultimately found guilty or acquitted, and a judge's discretion. There is not enough data on those variables to calculate their impact with any precision. As they each have the potential to result in more total days of required monitoring or less, they are assumed to offset one another.

- It is therefore estimated that a total of 3,944 additional people per year will be required to wear a transdermal monitoring device for a period of 90 days.
- The person ordered to wear a transdermal device is responsible for the costs associated with the service, unless the court determines the person to be indigent. In those cases, the person will be required to pay any amount they are able. Any amount they are unable to pay is assumed to be the liability of the local government.
- The exact number of offenders that will be determined to be indigent is unknown, but is assumed to be 20 percent, or 789 people (3,944 people x 20%).
- The average cost of a transdermal monitoring device including installation is estimated to be \$7 per day.
- Therefore, the mandatory increase in expenditures related to monitoring is estimated to be \$497,070 (789 people x \$7 per day x 90 days) in FY23-24 and subsequent years.
- There exists within the state treasury the Electronic Monitoring Indigency Fund (EMIF) established for the purposes of paying for the costs associated with ignition interlock devices, transdermal, and other monitoring devices ordered on those whom the court has deemed indigent.
- Pursuant to Tenn. Code Ann. § 55-10-419(j), for transdermal and other alternative monitoring devices, the state is only obligated to provide a 50 percent match with participating local governments, subject to availability.
- The counties currently participating in the program account for 66.4 percent of the state's population based on information provided by Treasury and the 2020 Census.
- Therefore, it is assumed that \$330,054 (\$497,070 x 66.4%) of the increased expenditures will be subject to a 50/50 match with the state.
- The local liability portion of the funds subject to the state match is therefore estimated to be \$165,027 (\$330,054 x 50%).
- In addition, local governments not participating in the match program will be responsible for an estimated 33.6 percent (100% - 66.4%) of the increased expenditures, or \$167,015 (\$497,070 x 33.6%).
- The total recurring mandatory increase in expenditures to local governments is estimated to be \$332,042 (\$165,027 + \$167,015) in FY23-24 and subsequent years.
- The total recurring increase in state expenditures from the EMIF is estimated to be \$165,027 (\$330,054 x 50%) in FY23-24 and subsequent years.

**Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The script is cursive and fluid, with the first letters of each name being capitalized and prominent.

Krista Lee Carsner, Executive Director

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